



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 31, 1995

Mr. Lamar G. Urbanovsky  
Chancellor  
The Texas State University System  
William P. Hobby Building  
333 Guadalupe, Tower III, Suite 810  
Austin, Texas 78701-3942

OR95-1155

Dear Mr. Urbanovsky:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35824.

Sam Houston State University ("SHSU") received a request for a copy of a scoreboard contract between SHSU and The Coca-Cola Company. You contend that the requested information is excepted from required public disclosure under sections 552.101 and 552.110 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that because the contract at issue contains a confidentiality clause the information is excepted from disclosure under section 552.101. Governmental bodies are prohibited from entering into contracts to keep information confidential. Open Records Decision Nos. 514 (1988), 484 (1987), 479 (1987). Accordingly, a governmental body may not use a contract to invoke section 552.101. Open Records Decision No. 491 (1988). You may not withhold the requested information under section 552.101 of the Government Code.

Section 552.110 excepts "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757 (1939). *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958). A trade secret

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939). There are six factors listed by the Restatement which should be considered when determining whether information is a trade secret:

(1) the extent to which the information is known out side of [the company's] business; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and to [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Id.* The governmental body or the company whose records are at issue must make a prima facie case for exception as a trade secret under section 552.110. *See* Open Records Decision No. 552 (1990) at 5.

Pursuant to section 552.305, we notified The Coca-Cola Company of the request for information. The Deputy General Counsel for Coca-Cola Enterprises responded by letter dated September 27, 1995. Coca-Cola Enterprises asserts that "[f]or the reasons outlined in Lamar G. Urbanovsky's September 12, 1995 letter to [this office], Houston Coca-Cola Bottling Company asks that the financial aspects of the Agreement not be disclosed. Such amounts are trade secrets and confidential commercial and financial information protected from disclosure." SHSU's September 12, 1995, letter to this office does not demonstrate how this information constitutes a trade secret. Neither SHSU nor Coca-Cola Enterprises illustrate how the six factors of a trade secret are applicable to this information.

Moreover, we note that in a recent open records letter issued by this office, Open Records Letter No. 95-960 (1995), the Stephen F. Austin State University received a similar request for information. In that instance, the Business Affairs Counsel for The Coca-Cola Company by letter dated September 5, 1995, responded to this office that "The Coca-Cola Company, on behalf of its Coca-Cola USA division, hereby elects not to designate any of the information contained in that contract as being proprietary." We are not aware whether the contracts are identical or to what extent The Coca-Cola Company and Coca-Cola Enterprises operate with autonomy as to any other division's business practices. However, it appears as if the Coca-Cola Company in electing not to designate any of the information contained in the Stephen F. Austin State University contract as proprietary, has negated any trade secret arguments that could have been set forth in this instance. Regardless, neither SHSU nor Coca-Cola Enterprises have made a prima facie showing that the requested information constitutes a trade secret. Accordingly, the requested information may not be withheld under section 552.110 of the Government Code. The information must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous *determination under section 552.301 regarding any other records*. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/LBC/rho

Ref: ID# 35824

Enclosures: Submitted documents

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